

Office of the Attorney General
State of North Dakota

Opinion No. 85-32

Date Issued: August 29, 1985

Requested by: Terry W. Elhard
McIntosh County State's Attorney

--QUESTION PRESENTED--

Whether a municipality may cancel delinquent installments of special assessments and ad valorem taxes that have been properly levied and certified to the county auditor.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a municipality may not cancel delinquent installments of special assessments and ad valorem taxes that have been properly levied and certified to the county auditor.

--ANALYSIS--

The well settled rule is that where taxes are legally assessed, a taxing authority is without power to compromise, release, or abate them except as specifically authorized by statute. C. Rhyne, *The Law of Local Government Operations* § 28.19 (1980); See also *Motor Freight System v. Donahue*, 221 N.E.2d 711, 712 (Ohio 1966); *State v. Pethtel*, 106 N.E.2d 626, 628-29 (Ohio 1952); Annot., 28 A.L.R.2d 1425 (1953); Annot., 99 A.L.R. 1062 (1935). This rule is consonant with the more general principle that municipalities are agencies of the state and possess only the power that is expressly conferred upon them by the Legislature or such powers as may be necessarily implied from the power expressly granted. *Ujka v. Sturdevant*, 65 N.W.2d 292, 293 (N.D. 1954).

Municipal powers are prescribed in N.D.C.C. §§ 40-05-01 and 40-05-02. N.D.C.C. § 40-05-01(4) provides that municipalities should have the power '[t]o levy and collect taxes on real and personal property for general and special purposes.' N.D.C.C. § 40-05-01(60) provides that municipalities shall have the following power:

40-05-01. POWERS OF ALL MUNICIPALITIES. The governing body of a municipality shall have the power:

60. Special improvement assessments--Redemptions. To make assessments as limited by the laws of this state for local improvements on property adjoining or benefited thereby; to collect the same in the manner provided by law; to redeem lands subject to special assessments after the sale thereof for delinquent general taxes; and to accept assignments of general tax sale certificates describing lands subject to special improvement assessments.

Neither N.D.C.C. §§ 40-05-01(4) nor 40-05-01(60) contains any provision which would enable a municipality to cancel delinquent special assessments and ad valorem taxes properly levied, nor may such power be necessarily implied from those sections. Implied powers which a municipal corporation can exercise are only those necessarily incident to powers expressly granted. City of Bloomington v. Wirrick, 45 N.E.2d 852, 855-56 (Ill. 1942).

Therefore, it is my opinion that a municipality may not cancel delinquent installments of special assessments and ad valorem taxes that have been properly levied and certified to the county auditor.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Tobyn J. Anderson
Assistant Attorney General